

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

REGINALDO SANTIAGO,

Plaintiff,

v.

WASHINGTON MUTUAL BANK, et
al.,

Defendants.

CASE NO. 09-CV- 1501 W (CAB)

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS (DOC. 5)**

Pending before the Court is a motion to dismiss filed by Defendant JP Morgan Chase Bank, N.A., as purchaser of the loans and other assets of Washington Mutual Bank (“Defendant”). Plaintiff has failed to oppose.

Civil Local Rule 7.1(f.3.c) provides that “[i]f an opposing party fails to file papers in the manner required by Local Rule 7.1(e)(2), that failure may constitute a consent to the granting of that motion or other ruling by the court.” The Ninth Circuit has held that a district court may properly grant a motion to dismiss for failure to respond. See generally Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam) (affirming dismissal for failure to file timely opposition papers where plaintiff had notice of the motion and ample time to respond).

Here, based on the hearing date, Plaintiff’s opposition was due on or before October 12, 2009. Plaintiff, however, did not file an opposition and has not requested

1 additional time to do so. Moreover, there is no evidence before the Court that
2 Defendant's moving papers failed to reach the mailing address designated in Defendant's
3 Proof of Service or that Plaintiff was not aware of the pending motion. Relying on Civil
4 Local Rule 7.1(f.3.c), the Court deems Plaintiff's failure to oppose Defendant's motion
5 as consent to the merits.

6 In light of the foregoing, Defendant's motion to dismiss (Doc. 5) is **GRANTED**
7 **WITH LEAVE TO AMEND.** Any amended complaint addressing the deficiencies
8 identified in Defendant's motion must be filed on or before December 7, 2009. Plaintiff
9 is further cautioned that failure to comply with this order or to respond to any future
10 motions to dismiss may result in dismissal with prejudice.

11 **IT IS SO ORDERED.**

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13 DATED: November 6, 2009

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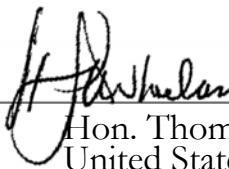
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Hon. Thomas J. Whelan
United States District Judge